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Supreme Court of the United States

OCTOBER TERM, 1951.

No. 347.

EARL T. ELLIS, Receiver of The Quantico Company, Incorporated, *Petitioner,*

v.

CLIFTON B. CATES.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

REPLY BRIEF OF PETITIONER.

Respondent's counsel, all in the Department of Justice, have so far departed from the record and the questions presented by the petition for the writ of certiorari, and the Rules of this Court, as to justify the assertion of "contempt of court" as by their brief appears. This brief, under the caption "Opinions Below," asserted: "Neither the district court nor the court of appeals wrote an opinion in denying the motion to vacate. *However, the opinion of the trial court (R. 14), dated July 16, 1949, following a hearing on the merits, is reported at 88 F. Supp. The opinion of the court of appeals affirming the judgment on the merits is reported at 178 F. 2d. 791.*" This language, in italics, is a gross departure from the record now before this Court, and it is designed to impede the due administration of justice. Such language is supplemented by a footnote as follows:

"In appealing from the order of the trial court overruling his motion to vacate, and is now asking review by this Court, petitioner took up only a partial record. A more complete record was before this Court on a previous petition for writ of certiorari in this same case, No. 739, October Term, 1949, and references to that record will be made necessary in stating the case." This is a direct violation of Rule 38, par. 2, of this Court which provides: "Only the questions specifically brought forward by the petition for writ of certiorari will be considered."

Respondent's brief does not deny or challenge the accuracy of the summary statement of the matter involved in this case, as set forth in petitioner's petition for the writ and incorporated in his brief by reference. The respondent, therefore, has admitted the truth of such statements. 3 Corpus Juris, section 1620, p. 1446. And Rule 27, par. 4, of this Court provides that respondent's brief shall contain "no statement of the case beyond what is deemed necessary in correcting any inaccuracy or omission in the statement of the other side." Yet the respondent's brief does contain a statement, covering three printed pages, of matter "not essential to a consideration of the questions presented by the petition for the writ."

This unauthorized statement contains the following: "Respondent likewise filed a motion for summary judgment on May 18, 1949 (R. 7), but it *failed* to mention the record (R. 8) showing petitioner's motion, filed June 3, 1949, to strike the respondent's motion for summary judgment. Such statement then declared that a hearing was had on both motions on June 6, 1949 (R. 28). But the Clerk's docket entries on June 6, 1949 (R. 28) fail to show that any motion of the respondent for summary judgment was heard by the trial Court on June 6, 1949. Moreover, such a motion was not ripe for argument and submission on June 6, 1949, as the motion to strike it had not been disposed of by the Court. This unauthorized statement contains a footnote

(2) as follows: "Petitioner's statement (Pet. 19) that respondent's motion was not before the Court on this hearing is erroneous *and is based on the mere failure of the clerk to mention that motion on the docket entry.*" The foregoing words, in italics, attack the verity of a solemn court record. In such footnote also appear the following: "The judgment of July 20, 1949 (R. 20) expressly recites that the cause was heard 'on motion of the respective parties for summary judgment.' But the record shows that this so-called judgment was drafted by an attorney in the Department of Justice. This unauthorized statement also asserted the following: "On July 20, 1949, the trial court entered a judgment granting respondent's motion for summary judgment and dismissing the action (R. 20)." But the record shows that the trial Court was not in session on July 20, 1949, at Alexandria, Va.; that the trial Judge was at Tarboro, North Carolina, on that date; and that such paper-writing was signed by him at that point on that date and then transmitted by him by letter dated July 20, 1949, to the Clerk of the Court at Alexandria, Virginia (R. 13). Such statement also asserted the following: "In doing so the court *wrote* an opinion dealing exhaustively with the merits (R. 14-19)." But the record (R. 23) shows that such pretended "opinion" was written by Herbert Pittle, an attorney in the Department of Justice, and likewise an attorney of record for the respondent in the trial court, and then transmitted by an Assistant Attorney General (A. Devitt Vanech) to the trial Judge Don Gilliam at Tarboro, North Carolina, where it was signed by him on July 16, 1949, and then transmitted by letter dated at that place on July 20, 1949, to the Clerk of the trial Court at Alexandria, Virginia, who entered the same upon his records in this action. This circumstance is referred to by respondent's footnote (3) to his brief as follows: "The motion (to vacate) also alleged (R. 23, paragraphs 11 and 12) that the trial court's opinion was written and prepared by an attorney in the De-

partment of Justice. * * * *Even if it were true the court's action was not improper.*" These words, coming from the Solicitor General of the United States, shock the conscience of mankind. They are akin to tyranny and oppression in worst form.

The respondent's brief, page 8, contains the following language: "The matter had already been fully and finally litigated as far back as 1932. *United States* v. *H. B. Gilliam and C. E. Ellis,* Receivers of The Quantico Company, Equity No. 33 in the district court, reported sub, nom. *United States* v. *McIntosh,* 2 F. Supp. 244. In that case, as in the instant case, it was finally and conclusively established that the *United States* validly acquired the land involved and that The Quantico Company, through petitioner's predecessors, received just compensation in an amount agreed upon by them." The record evidence in the instant case (R. 11-12) shows that the district court in the above case, in so far as it related to the Quantico Company, had no jurisdiction of either the parties or the subject matter, and that such proceeding was *coram non judice* and void on its face. The defendants in that case were State Court Receivers, and the subject-matter and the lands were within the jurisdiction and custody of that Court, and no other, *Palmer* v. *Texas,* 212 U. S. 125. Moreover, a "presidential proclamation" was relied on by the United States as a basis of its title to the lands of the Quantico Company, a thing suggested by the Secretary of the Navy while the Government was occupying said lands under a lease.

Petitioner's counsel, being forced to answer the above matter now, refers to the record evidence in this instant case (R. 8-9). This evidence shows that the United States Marine Corps entered into possession of and occupied on July 1, 1918, the lands owned and leased by The Quantico Company, Incorporated, to the United States on July 1, 1918, and continued in possession thereof at all times there-

after; that said leased lands are described under the "First Parcel" and "Second Parcel" in the complaint in this action; that the United States paid to the Quantico Company the total sum of $275,477.00, and no other money, as the contract rent for said land; that the United States has never received from the Quantico Company any deed of conveyance of the lands described in the complaint; that the United States has never served any notice upon the Quantico Company of its legal representative, of an intention to terminate the least of said lands; and that the respondent has no right or title or interest in the lands described in the complaint. This evidence means that respondent never had a defense to this action of ejectment.

Since the United States acquired possession of said lands under a lease from the Quantico Company, and has never restored such possession to said Company, or its legal representative, the respondent, who asserts no title or interest such lands, is absolutely estopped from controverting the title of the petitioner to said lands, or asserting any title thereto in the United States. In *Chavez* v. *Bergere,* 231 U. S. 482, 490-491, this Court said:

> "As said in Tyler on Ejectment (p. 543): 'There is a class of cases in which the defendant is not permitted to controvert the title of the claimant in an action of ejectment on the ground of *estoppel.* These are cases where a privity exists between the defendant and the plaintiff, or those from whom he derives title. If a privity in estate has subsisted between the parties, proof of title is ordinarily unnecessary on the part of the plaintiff, for the reason that a party is not permitted to dispute the title of him by whom he was let into possession. In all these cases, the proof is directed to the question as to whether such a relation exists between the parties so as to operate as an estoppel, and thereby supersede the necessity of introducing evidence to establish the title of the claimant."

This is a diversity of citizenship case (R. 1), in *Emerick* v. *Tavener,* supra, 9 Grat. (50), pages 220, 223, 224, the Virginia Supreme Court of Appeals said:

> "A tenant cannot be permitted to question or impugn the title of his landlord during the continuance of the tenancy, *nor until he has restored the possession* or done what would be regarded as the equivalent; nor can he be permitted to deny that the possession so received was the possession of the landlord. And the rule is extended to the case of a tenant acquiring possession by wrong against the owner; and to one holding over after the expiration of the lease; and it applies whether the question arises directly in an action brought against the tenant to recover the possession, or in a collateral form in some other action. * * *
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> *When once the relation of landlord and tenant is established by the acts of the parties, it attaches to all who may succeed to the possession through or under the tenant, whether immediately or remotely, the succeeding tenant being as much bound by the acts and admissions of his predecessor as if they were his own.*" (Italics supplied).

CONCLUSION

The foregoing justifies this Court in disregarding respondent's brief.

Respectfully submitted,

CHARLES WILLIAM FREEMAN,
Counsel for Petitioner.

October, 1951.